

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	Case No. 12-10058-TPA
)	
GREAT PLAINS EXPLORATION, LLC,)	
Debtor)	Chapter 11
)	
GUY C. FUSTINE, CHAPTER 11)	Doc. No. ____
TRUSTEE FOR GREAT PLAINS)	
EXPLORATION, LLC,)	
Applicant/Movant)	
)	
vs.)	
)	
1 ST SOURCE BANK, CATERPILLAR)	
FINANCIAL SERVICES)	
CORPORATION, CHARTER ONE)	
BANK, N.A., HURON LIME)	
COMPANY, LLC, NATIONAL CITY)	
BANK, NATIONAL CITY)	
COMMERCIAL CAPITAL COMPANY,)	
LLC, RBS ASSET FINANCE, INC., RBS)	
CITIZENS, N.A., WELLS FARGO)	
EQUIPMENT FINANCE, INC., SG)	
EQUIPMENT FINANCE USA)	
CORPORATION, MENTOR)	
EQUIPMENT RENTAL, LLC, LAKE)	
NATIONAL BANK, CITICAPITAL)	
COMMERCIAL CORPORATION, and)	
FORD MOTOR CREDIT CO.,)	
Respondents)	

**CHAPTER 11 TRUSTEE'S APPLICATION TO EMPLOY AUCTIONEER AND
MOTION TO SELL PERSONAL PROPERTY FREE AND DIVESTED OF LIENS AT
PUBLIC AUCTION**

AND NOW, this 11th day of March, 2015, comes Guy C. Fustine, Esquire, Chapter 11 Trustee, by and through his counsel, Knox McLaughlin Gornall & Sennett, P.C., with this Application to Employ Auctioneer and Motion to Sell Personal Property Free and Divested of Liens at Public Auction, as follows:

INTRODUCTION

1. The Bankruptcy Court has jurisdiction over this Motion under 28 U.S.C. §1334, 28 U.S.C. §157, and the Order of Reference to the Bankruptcy Court in the Western District of Pennsylvania. This Motion is filed pursuant to 28 U.S.C. §327, 28 U.S.C. §363 and the Bankruptcy Rules of Court. This is a “core” proceeding under 28 U.S.C. §157(b)(2).

2. On January 11, 2012, Oz Gas, Ltd. (“Oz Gas”) and Great Plains Exploration, LLC (“Great Plains Exploration” or “GPE”) filed voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code.

3. The Debtors are represented by Bernstein-Burkley, P.C., 2200 Gulf Tower, Pittsburgh, Pennsylvania 15219, Attn: Robert S. Bernstein, Esquire.

4. No Official Creditors’ Committee was appointed in the Great Plains Exploration case. The Creditors’ Committee in the Oz Gas case is represented by The Quinn Law Firm, 2222 West Grandview Boulevard, Erie, Pennsylvania 16506, Attn: Lawrence C. Bolla, Esquire.

5. On November 14, 2014, the United States Trustee for Region 3 appointed Guy C. Fustine, Esquire, to serve as the Chapter 11 Trustee in both cases. The appointment was approved by the Court on November 14, 2014 at Docket No. 1043 in the Oz Gas case and at Docket No. 997 in the Great Plains Exploration case. Knox McLaughlin Gornall & Sennett, P.C. was authorized to serve as attorney pro se for the Trustee by Order dated December 8, 2014 at Docket No. 1068 in the Oz Gas case and Docket No. 1025 in the Great Plains Exploration case.

RESPONDENTS

6. 1st Source Bank, Construction Equipment Division, P.O. Box 783, South Bend, Indiana 46624, is represented by May Oberfell Lorber, 4100 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545; and, represented locally by Marsh Spaeder Bauer Spaeder & Schaaf, 300 State Street, Suite 300, Erie, Pennsylvania 16507, Attn: Laura S. Steehler, Esquire. 1st

Source Bank filed a Financing Statement against GPE with the Ohio Secretary of State on May 21, 2007 at File No. OH00115366800 for a security interest in a Screen Machine Impact Crusher and Finlay Supertrack Screen with accessories, continued on December 7, 2011 at File No. 20113420044; on March 28, 2008 at File No. OH00125229125 for a security interest in Caterpillar D6R Tractor, Ingersoll Rand Compressor, Mack Water Truck and accessories, continued October 2, 2012 at File No. 20122760020; and, on April 9, 2008 at File No. OH00125517237 for a security interest in a second Mack Water Truck and related equipment, continued on November 7, 2012 at File No. 20123120065. 1st Source has a valid security interest. Furthermore, the Trustee has entered into a separate Stipulation with 1st Source, subject to Bankruptcy Court approval, covering how and when the proceeds of sale will be distributed and the payment terms for the collateral which is not being sold (i.e. the water trucks which are not being sold and which are used in connection with the business operations).

7. Respondent Caterpillar Financial Services Corporation, 2120 West End Avenue, Nashville, Tennessee 37203-0986, is represented by Buchanan Ingersoll & Rooney, P.C., One Oxford Centre, 20th Floor, 301 Grant Street, Pittsburgh, Pennsylvania 15219, Attn: Kelly M. Neal, Esquire. Caterpillar Financial Services Corporation filed five (5) Financing Statements against GPE with the Ohio Secretary of State, as follows:

<u>File No.</u>	<u>File Date</u>	<u>Cont. No.</u>	<u>Cont. Date</u>	<u>Collateral</u>
OH00116100768	6/12/07	20121070117	4/16/12	CAT Excavator
OH00120817107	11/5/07	20122570119	9/13/12	CAT Excavator
OH00125045296	3/24/08	20130560012	2/25/13	CAT Tractor
OH00126002459	4/24/08	20130840080	3/25/13	CAT Loader
OH00127242862	6/5/08	20131340416	5/14/13	CAT Excavator

The Trustee has been advised that Respondent Caterpillar Financial Services Corporation has been paid in full.

8. Respondent Charter One Bank, N.A., c/o RBS Citizens, N.A., 1215 Superior Avenue, 6th Floor, Cleveland, Ohio 44114, is represented by Drinker, Biddle & Reath, LLP, One Logan Square, Suite 2000, Philadelphia, Pennsylvania 19103-6996, Attn: Andrew D. Kassner, Esquire. Charter One Bank filed a Financing Statement against GPE with the Ohio Secretary of State on August 4, 2008 at File No. OH00128660253. There were three (3) collateral amendments and the Financing Statement was continued on March 5, 2013 at File No. 20130640456. The collateral includes a McCloskey Crusher with Screens installed; Gas Compressor Package; Noram Compact Grader; Sterling Crane; Terex Boom; and, Case Skid Steer Track Loader. The security interests in favor of Respondent Charter One Bank are subordinate to the security interests in favor of Respondent RBS Asset Finance, Inc. in the same collateral.

9. Respondent Huron Lime Company, LLC, P.O. Box 658, Mentor, Ohio 44060, filed a Financing Statement against GPE with the Ohio Secretary of State on August 4, 2011 at File No. OH00152091973 for a security interest in the Debtor's accounts, contract rights and negotiable instruments. Huron Lime Company, LLC is represented by Dworken & Bernstein, 60 South Park Place, Painesville, Ohio 44077. The Trustee has been advised that Respondent Huron Lime Company has been paid in full.

10. Respondent National City Bank, 1900 East 9th Street, Cleveland, Ohio 44114, filed a Financing Statement against GPE with the Ohio Secretary of State on May 1, 2006 at File No. OH00101598481 for an all-inclusive security interest in the Debtor's personal property; followed by a collateral amendment on November 20, 2006 at File No. 20063240740 to include a 2006 Mack Oilfield Winch Tractor, 2006 Dickirson Service Rig and 2006 Dickirson Swab Rig as additional collateral. The Financing Statement was terminated on September 15, 2008 at File

No. 20082590086. Furthermore, the Trustee has been advised that National City Bank has been paid in full.

11. Respondent National City Commercial Capital Company, LLC, 101 South Fifth Street, Louisville, Kentucky 40202, filed a Financing Statement against GPE with the Ohio Secretary of State on November 10, 2006 at File No. OH00108722665, amended on November 20, 2006 at File No. 20063240740 and continued on October 13, 2011 at File No. 20112860380. The collateral is a 2008 Mack Granite Oilfield Winch Tractor. Notwithstanding the alleged security interest, the Trustee has been advised that National City Commercial Capital Company has been paid in full.

12. Respondent RBS Asset Finance, Inc., 480 Jefferson Boulevard, Warwick, Rhode Island 02886, filed the following Finance Statements against GPE with the Ohio Secretary of State:

<u>File No.</u>	<u>File Date</u>	<u>Cont. No.</u>	<u>Cont. Date</u>	<u>Collateral</u>
OH00133757285	4/3/09	20140620036	3/3/14	McCloskey Crusher with Screens installed and Gas Compressor Package
OH00134071282	4/20/09	20140870281	3/28/14	All personal property
OH00134111127	4/20/09	20140870342	3/28/14	Sterling Crane, Terex Boom and Case Skid Steer Track Loader
OH00135169725	6/4/09			2009 Noram Compact Grader

13. Respondent RBS Citizens, N.A. d/b/a Charter One Bank, N.A., 1215 Superior Avenue, 6th Floor, Cleveland, Ohio 44114, is represented by Drinker, Biddle & Reath, LLP, One Logan Square, Suite 2000, Philadelphia, Pennsylvania 19103-6996, Attn: Andrew D. Kassner, Esquire. RBS Citizens, N.A. filed a Financing Statement against GPE with the Ohio Secretary of State on June 18, 2010 at File No. OH00143053174 for a security interest in the PCO-Mayfield, Ltd. contract and proceeds. RBS Citizens also filed Financing Statements against GPE

with the Ohio Secretary of State on July 14, 2009 at File No. 20091960084 for a security interest subordinate to the security interest in favor of RBS Asset Finance, Inc. in the same collateral.

14. Respondent Wells Fargo Equipment Finance, Inc., 733 Marquette Avenue, Suite 700, Minneapolis, Minnesota 55402, is represented by McGuire Woods, LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222, Attn: Michael J. Roeschenthaler, Esquire. Wells Fargo Equipment Finance, Inc. filed the following Financing Statements against GPE with the Ohio Secretary of State:

<u>File No.</u>	<u>File Date</u>	<u>Cont. No.</u>	<u>Cont. Date</u>	<u>Collateral</u>
OH00111481062	1/31/07	20112730119	9/30/11	2006 Atlas Copco with accessories
OH00126234753	5/1/08	20130430174	2/12/13	Continental Mud Pump, Beavertail Flat Trailer, Talbert Lowboy Trailer and accessories
OH00127097065	5/30/08	20130650191	3/6/13	2008 Rotadrill Drill Rig mounted on Crane Carrier with accessories
OH00129295865	9/3/08	20132330105	8/21/13	Schramm Pipe Handling System, Vacuum Tank Trailer, 34' Float Trailer, 42' Float Trailer, 40' Doghouse, GMC Chassis and accessories

Moreover, Wells Fargo has a lien noted on the Ohio Certificate of Title for the Beaver Tail Trailer which is included in the sale and located in Pennsylvania.

15. Financing Statement No. OH00126234753 in favor of Wells Fargo Equipment Finance, Inc. was assigned to Respondent SG Equipment Finance, USA Corporation, 480 Washington Boulevard, 24th Floor, Jersey City, New Jersey 07310.

16. Respondent Mentor Equipment Rental, LLC is affiliated with Mr. Richard Osborne. Mr. Osborne's individual attorney, Richard Baumgart, Esquire, also represents Mentor Equipment Rental, LLC. Mentor Equipment Rental, LLC is believed to be a newly formed entity to purchase the loans and security agreements between GPE and Wells Fargo Equipment

Finance, Inc. The effective transfer date was allegedly January 16, 2015. However, no transfer of claim documents or assignments have been filed with the Court or served upon the Trustee.

17. Respondent Lake National Bank, 7402 Center Street, Mentor, Ohio 44060, is represented by Thrasher, Dinsmore & Dolan, 100 Seventh Avenue, Suite 150, Chardon, Ohio 44024-1079, Attn: Todd C. Hicks, Esquire. Lake National Bank was included as a secured claim on the Schedule of Liabilities filed by Great Plains Exploration regarding eight (8) separate automobile loans. None of the involved vehicles are included in the sale. Furthermore, the Trustee has been advised that Lake National Bank has been paid in full.

18. Respondent CitiCapital Commercial Corporation, 3950 Regent Boulevard, 2nd Floor Lien Perfection, Irving, Texas 75063, has a lien noted on the Ohio Certificates of Title for two (2) Dickirson trailers which are included in the sale. This Respondent also filed Financing Statements in Pennsylvania against Oz Gas. However, the Trustee has been advised that this Respondent has been paid in full.

19. Respondent Ford Motor Credit Co., P.O. Box 105704, Atlanta, Georgia 30348, has a lien noted on the Ohio Certificate of Title for one Ford Super Duty Truck which is included in the sale. However, the Trustee has been advised that Ford Motor Credit Co. has been paid in full.

ASSETS FOR SALE

20. Among the assets of the Estate is personal property of the Debtor located in Tidioute, Pennsylvania; Mentor, Ohio; and/or Winifred, Montana. Said personal property includes equipment and vehicles owned by the Debtor. The Trustee has determined that certain pieces of equipment and certain vehicles are no longer necessary for the operation of the

business on a going-forward basis. Accordingly, the Trustee desires to sell the excess equipment and vehicles at public auction.¹

21. The Trustee requests approval to proceed with the auction sale as soon as possible under the applicable Rules of Court.

22. The Debtor's excess personal property which is listed for sale is described on Exhibit A attached hereto (the "Assets"). The Assets are divided into three (3) groups based upon their current location: one group of assets is located in Tidioute, Pennsylvania; one group of assets is located in Mentor, Ohio; and, one group of assets is located in Winifred, Montana. The Assets are owned by the Debtor and/or by the Debtor's affiliate, Oz Gas, Ltd. ("Oz Gas"). Oz Gas is also in Chapter 11 in the Western District of Pennsylvania at Case No. 12-10058-TPA. The Chapter 11 Trustee has filed a similar application to employ auctioneer and to sell personal property free and divested of liens at public auction in the Oz Gas case. The proposed auctions will be conducted at the same time and place and the proceeds received for each asset sold will be accounted for separately.

23. After the auction, the Trustee anticipates filing a separate motion in each case for authority to distribute the proceeds of sale, after notice to all interested parties and a separate hearing on the Trustee's proposed distribution of the auction sale proceeds.

24. The Trustee believes that the best method for maximizing the value of the Assets is to proceed with the proposed public auction sale in accordance with the terms of the Auction Contract.

¹ The Trustee believes that the Debtor owns additional excess equipment and vehicles which have not yet been located and, for the time being, are not included in the sale. However, the Auction Contract provides that the Trustee may add additional items to the auction at a later time. Attached hereto as Exhibit D is a list of additional assets which were identified on Financing Statements filed of public record, showing that these additional assets are owned by Great Plains Exploration. These additional assets have not yet been located. However, the Trustee reserves the right to include them in the sale if reasonably possible.

**APPLICATION TO EMPLOY AUCTIONEER
PER STANDARD AUCTION CONTRACT WITH PRICE GUARANTY**

25. Paragraphs 1 through 24 are incorporated herein by reference.
26. After having interviewed numerous auctioneers who were referred to the Trustee by parties in interest, the Trustee seeks to employ Cincinnati Industrial Auctioneers, Inc., 2020 Dunlap Street, Cincinnati, Ohio 45214 (“CIA” or “Auctioneer”) (internet: www.cia-auction.com) (email: info@cia-auction.com), as the auctioneer in these proceedings, for the purpose of selling the Assets at a public auction sale.
27. Subject to Bankruptcy Court approval, the Trustee has entered into a Standard Form Auction Contract for CIA to sell at public auction the Assets of Oz Gas and Great Plains Exploration which are included on the list of Assets attached hereto as Exhibit A.
28. The Auction Contract provides that the auction will be held within forty-five (45) days after court approval of the Auctioneer.
29. The services of the Auctioneer are necessary to conduct the sale. CIA is experienced and has conducted many equipment auction sales across the region, including bankruptcy auctions and auctions of similar assets.
30. CIA is included on the “List of Approved Auctioneers” for the United States Bankruptcy Court for the Northern District of Ohio.
31. The proposed Standard Form Auction Contract is attached hereto as Exhibit B (the “Auction Contract”).
32. The Auction Contract includes a Price Guaranty in the amount of \$1,550,000.
33. The Auction Contract provides for a ten (10%) percent buyer’s premium to compensate the Auctioneer for its services. The buyer’s premium for webcast auction buyers is thirteen (13%) percent.

34. The amount of the Auctioneer's guaranty is based upon the equipment list attached hereto as Exhibit A. If items are removed from the list, or added to the list, the guaranteed amount may be adjusted.

35. The guaranteed amount under the Auction Contract shall be paid as follows: the Auctioneer will make a deposit in the amount of \$155,000 when the Auctioneer and Auction Contract are approved and the balance of the guaranteed amount, \$1,395,000, will be paid one day prior to the auction in immediately available funds (e.g. confirmed receipt of a wire transfer).

36. From the proceeds of sale, the Auctioneer will be reimbursed for (a) the amount of the guaranty and (b) the Auctioneer's actual expenses, in an amount not to exceed \$50,000. After reimbursement of the guaranteed proceeds and payment of the expenses, the Trustee and Auctioneer shall share the excess, if any, with ninety (90%) percent of the proceeds being paid to the Trustee and ten (10%) percent of the proceeds being paid to the Auctioneer up to \$1,800,000. Proceeds received in excess of \$1,800,000 shall be paid one hundred (100%) percent to the Trustee.

37. The Auctioneer's Verified Statement is attached hereto as Exhibit C.

38. A proposed Order approving the employment of CIA is attached hereto on the form adopted by this Honorable Court.

WHEREFORE, the Trustee requests entry of the attached order authorizing the employment of Cincinnati Industrial Auctioneers, Inc. in accordance with the terms and conditions of the Auction Contract and this Application; and, that the Trustee have such other and further relief as is necessary and just.

MOTION FOR AUTHORITY TO CONDUCT PUBLIC AUCTION

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. It is in the best interest of all parties and the Estate that the Trustee be authorized to sell the Assets by public auction as proposed, free and clear of liens, and that the above-recited liens, claims and interests of the Respondents referred to hereinabove be divested from the property sold and transferred to the proceeds of sale.

41. Some or all of the above-recited liens, claims and interests of the Respondents may represent valid, enforceable and unavoidable liens against, and/or security interests in, some of the Assets to be sold and the proceeds of sale.

42. Nevertheless, the Trustee requests that the proposed public sale be ordered to take place free and clear of the above-referenced liens, claims, encumbrances and other interests; that the liens, claims, encumbrances and other interests be divested from the Assets sold and then transferred to the proceeds of sale, but only to the extent that they are found to be valid, enforceable and unavoidable liens, claims, encumbrances and other interests.

43. The Trustee requests that the Trustee's costs of sale and costs of bankruptcy administration be paid in full from the proceeds of sale before any distribution to creditors. Subject to Bankruptcy Court approval after notice and hearing, the Trustee's costs of sale and of bankruptcy administration, including the Trustee fees, legal fees for services rendered as attorney pro se and the reasonable and necessary costs of maintaining and preserving the property for sale shall be paid in advance of any distribution to creditors.

44. The Trustee believes that the best way to maximize the value of the Assets is to sell the Assets in the form and manner contemplated by the Auction Contract and this Motion.

45. The best interest of creditors and the Estate will be served if the Trustee is authorized to sell the Assets in the form and manner contemplated by the Auction Contract and this Motion.

46. The Trustee requests that the proceeds of sale, after the Auctioneer's expenses and fees are paid in accordance with the Auction Contract, shall be paid to the Trustee and held in escrow pending further order of this Honorable Court, after notice and hearing on a motion to be filed by the Trustee for authority to distribute the proceeds of sale.

47. The Respondents and interested parties, including Mr. Richard Osborne and affiliated companies owned and/or controlled by Mr. Osborne, are required to file any and all objections to the auction sale prior to the hearing on the Application for permission to employ the Auctioneer and to proceed with the auction sale. In the event that objections are filed, the Trustee will request that the objections be resolved prior to the auction date. If the Respondents and interested parties, including Mr. Osborne, are given the opportunity to object at the time of the auction, they will, in effect, have the ability to disrupt the auction, chill the bidding and cause irreparable harm to the Estate. Objections at the time of the auction should be limited to objections to bidding on a specific item of property sold, and should not be used to object to the sale at the time of the auction on other grounds, including ownership of the Assets or liens against the Assets.

48. A proposed order authorizing the public auction sale, free and clear of liens, is attached hereto on the form approved by the Court. A red-lined version of the proposed order is also attached, showing the Trustee's proposed changes to the form language for the reasons set forth in Paragraph 46.

WHEREFORE, the Chapter 11 Trustee prays for entry of an order authorizing the Trustee to sell the Assets free and clear of liens, claims, encumbrances and other interests in accordance with the terms and conditions of the Auction Contract and this Motion; ordering that the liens, claims, encumbrances and other interests in, to or against the Assets be divested therefrom and transferred to the proceeds of sale, but only to the extent that they are valid,

enforceable and unavoidable liens, claims, encumbrances and other interests; ordering that the Trustee shall hold the net proceeds of sale in escrow pending further order of Court after notice and hearing; and, ordering that the Chapter 11 Trustee have such other and further relief as is reasonable and just, including but not limited to an order establishing the Auctioneer's right to access the premises in accordance with the terms of the Auction Contract.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By: /s/ Guy C. Fustine
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	Case No. 12-10058-TPA
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Debtor)	Chapter 11
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EXPLORATION, LLC,)	
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FINANCIAL SERVICES CORPORATION,)	
CHARTER ONE BANK, N.A., HURON)	
LIME COMPANY, LLC, NATIONAL CITY)	
BANK, NATIONAL CITY COMMERCIAL)	
CAPITAL COMPANY, LLC, RBS ASSET)	
FINANCE, INC., RBS CITIZENS, N.A.,)	
WELLS FARGO EQUIPMENT FINANCE,)	
INC., SG EQUIPMENT FINANCE USA)	
CORPORATION, MENTOR EQUIPMENT)	
RENTAL, LLC, LAKE NATIONAL BANK,)	
CITICAPITAL COMMERCIAL)	
CORPORATION, and FORD MOTOR)	
CREDIT CO.,)	
Respondents)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above-captioned pleading was served on the Respondents and counsel of record as specified on the attached service list on March 11, 2015. The type of service made on the parties was first-class mail and/or electronic notification.

Respectfully submitted,

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